designers and manufacturers are encouraged to specify materials with appropriate values. As more products include information on slip resistance, improved uniformity in measurement and specification is likely. The Access Board's advisory guidelines on Slip Resistant Surfaces provides additional information on this subject.

II. Color Contrast—Step Edges, Lift Platform Edges

The material used to provide contrast should contrast by at least 70%. Contrast in percent is determined by:

Contrast = $[(B_1—B_2)/B_1]$ x 100

Where B_1 = light reflectance value (LRV) of the lighter area and B_2 = light reflectance value (LRV) of the darker area.

Note that in any application both white and black are never absolute; thus, B_1 never equals 100 and B_2 is always greater than 0.

III. Handrails and Stanchions

In addition to the requirements for handrails and stanchions for rapid, light, and commuter rail vehicles, consideration should be given to the proximity of handrails or stanchions to the area in which wheelchair or mobility aid users may position themselves. When identifying the clear floor space where a wheelchair or mobility aid user can be accommodated, it is suggested that at least one such area be adjacent or in close proximity to a handrail or stanchion. Of course, such a handrail or stanchion cannot encroach upon the required 32 inch width required for the doorway or the route leading to the clear floor space which must be at least 30 by 48 inches in size.

IV. Priority Seating Signs and Other Signage

A. *Finish and Contrast.* The characters and background of signs should be eggshell, matte, or other non-glare finish. An eggshell finish (11 to 19 degree gloss on 60 degree glossimeter) is recommended. Characters and symbols should contrast with their background either light characters on a dark background or dark characters on a light background. Research indicates that signs are more legible for persons with low vision when characters contrast with their background by at least 70 percent. Contrast in percent is determined by:

Contrast = $[(B_1—B_2)/B1]$ x 100

Where B_1 = light reflectance value (LRV) of the lighter area and B_2 = light reflectance value (LRV) of the darker area.

Note that in any application both white and black are never absolute; thus, B_1 never equals 100 and B_2 is always greater than 0.

The greatest readability is usually achieved through the use of light-colored characters or symbols on a dark background.

B. *Destination and Route Signs.* The following specifications, which are required for buses (§ 38.39), are recommended for other types of vehicles, particularly light rail vehicles, where appropriate.

1. Where destination or route information is displayed on the exterior of a vehicle, each vehicle should have illuminated signs on the front and boarding side of the vehicle.

2. Characters on signs covered by paragraph IV.B.1 of this appendix should have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10, with a minimum character height (using an upper case ''X'') of 1 inch for signs on the boarding side and a minimum character height of 2 inches for front ''headsigns,'' with ''wide'' spacing (generally, the space between letters shall be 1/16 the height of upper case letters), and should contrast with the background, either dark-on-light or light-on-dark, or as recommended above.

C. *Designation of Accessible Vehicles.* The International Symbol of Accessibility should be displayed as shown in Figure 6.

V. Public Information Systems.

There is currently no requirement that vehicles be equipped with an information system which is capable of providing the same or equivalent information to persons with hearing loss. While the Department of Transportation assesses available and soon-to-be available technology during a study conducted during Fiscal Year 1992, entities are encouraged to employ whatever services, signage or alternative systems or devices that provide equivalent access and are available. Two possible types of devices are visual display systems and listening systems. However, it should be noted that while visual display systems accommodate persons who are deaf or are hearing impaired, assistive listening systems aid only those with a partial loss of hearing.

A. *Visual Display Systems.* Announcements may be provided in a visual format by the use of electronic message boards or video monitors.

Electronic message boards using a light emitting diode (LED) or ''flip-dot'' display are currently provided in some transit stations and terminals and may be usable in vehicles. These devices may be used to provide real time or pre-programmed messages; however, real time message displays require the availability of an employee for keyboard entry of the information to be announced.

Video monitor systems, such as visual paging systems provided in some airports (e.g., Baltimore-Washington International Airport), are another alternative. The Architectural and Transportation Barriers Compliance Board (Access Board) can provide technical assistance and information on these systems (''Airport TDD Access: Two Case Studies,'' (1990)).

B. *Assistive Listening Systems.* Assistive listening systems (ALS) are intended to augment standard public address and audio systems by providing signals which can be received directly by persons with special receivers or their own hearing aids and which eliminate or filter background noise. Magnetic induction loops, infra-red and radio frequency systems are types of listening systems which are appropriate for various applications.

An assistive listening system appropriate for transit vehicles, where a group of persons or where the specific individuals are not known in advance, may be different from the system appropriate for a particular individual provided as an auxiliary aid or as part of a reasonable accommodation. The appropriate device for an individual is the type that individual can use, whereas the appropriate system for a station or vehicle will necessarily be geared toward the ''average'' or aggregate needs of various individuals. Earphone jacks with variable volume controls can benefit only people who have slight hearing loss and do not help people who use hearing aids. At the present time, magnetic induction loops are the most feasible type of listening system for people who use hearing aids equipped with ''T-coils'', but people without hearing aids or those with hearing aids not equipped with inductive pick-ups cannot use them without special receivers. Radio frequency systems can be extremely effective and inexpensive. People without hearing aids can use them, but people with hearing aids need a special receiver to use them as they are presently designed. If hearing aids had a jack to allow a by-pass of microphones, then radio frequency systems would be suitable for people with and without hearing aids. Some listening systems may be subject to interference from other equipment and feedback from hearing aids of people who are using the systems. Such interference can be controlled by careful engineering design that anticipates feedback sources in the surrounding area.

The Architectural and Transportation Barriers Compliance Board (Access Board) has published a pamphlet on Assistive Listening Systems which lists demonstration centers across the country where technical assistance can be obtained in selecting and installing appropriate systems. The state of New York has also adopted a detailed technical specification which may be useful.

NOTICE OF ADOPTION OF REGULATION AND SUBMISSION FOR APPROVAL

Mr. THURMOND. Mr. President, pursuant to section 304(b) of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1384(b)), a notice of adoption of regulation and submission for approval was submitted by the Office of Compliance, U.S. Congress. The notice contains final regulations related to provisions of the Occupational Safety and Health Act of 1970 (Regulations under section 215 of the Congressional Accountability Act of 1995.)

The Congressional Accountability Act requires this notice be printed in the CONGRESSIONAL RECORD, therefore I ask unanimous consent that the notice be printed in the RECORD.

There being no objection, the notice was ordered to be printed in the RECORD, as follows:

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: EXTENSION OF RIGHTS AND PROTECTIONS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

NOTICE OF ADOPTION OF REGULATION AND SUBMISSION FOR APPROVAL

Summary: The Board of Directors, Office of Compliance, after considering comments to its Notice of Proposed Rulemaking published September 19, 1996, in the Congressional Record, has adopted, and is submitting for approval by the Congress, final regulations implementing section 215 of the Congressional Accountability Act of 1995 (''CAA'').

For Further Information Contact: Executive Director, Office of Compliance, Room LA 200, Library of Congress, Washington, D.C. 20540–1999. Telephone: (202) 724–9250. TDD: (202) 426–1912.

SUPPLEMENTARY INFORMATION

Background and Summary

The Congressional Accountability Act of 1995 (''CAA''), P.L. 104–1, was enacted into law on January 23, 1995. 2 U.S.C. §§1301 *et seq.* In general, the CAA applies the rights and protections of eleven federal labor and employment statutes to covered employees and employing offices within the legislative branch. Section 215(a) provides that each employing office and each covered employee shall comply with the provisions of section 5 of the Occupational Safety and Health Act of 1970, 29 U.S.C. §654 (''OSHAct''). 2 U.S.C. §1341(a).

Section 215(d) of the CAA requires the Board of Directors of the Office of Compliance established under the CAA to issue regulations implementing the section. 2 U.S.C. §1341(d). Section 215(d) further states that such regulations ''shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and

protections under this section.'' *Id.* Section 215(d) further provides that the regulations ''shall include a method of identifying, for purposes of this section and for different categories of violations of subsection (a), the employing office responsible for correction of a particular violation.'' *Id.*

On September 19, 1996, the Board published in the Congressional Record a Notice of Proposed Rulemaking (''NPR'') (142 Cong. Rec. S11019 (daily ed., Sept. 19, 1996)). In response to the NPR, the Board received four written comments, two of which were from offices within the Legislative Branch and two of which were from labor organizations. After full consideration of the comments received in response to the proposed regulations, the Board has adopted and is submitting these regulations for approval by the Congress pursuant to section 304(c) of the CAA.

I. Summary of Comments and Board's Final Rules

A. Request for additional rulemaking proceedings

One commenter requested that the Board withdraw its proposed regulations and engage in what it terms ''investigative rulemaking,'' a process that apparently is to include discussions with involved parties regarding the nature and scope of the regulations. This commenter expressed the concern that affected parties had not been sufficiently involved in the rulemaking process and have been discouraged from providing meaningful comments. Specifically, the commenter objected to the following actions of the Board: (1) providing a comment period of no more than 30 days; (2) issuing a notice of proposed rulemaking without first issuing an advance notice of proposed rulemaking; (3) issuing proposed regulations under section 215 concurrently with proposed regulations under section 210 and shortly before the Congress had adjourned *sine die;* (4) stating in the NPR that nomenclature and other technical changes were made to the adopted regulations, but not specifically cataloguing each of those changes in the summary of the proposed rules; and (5) not providing a record of consultations between the Office and representatives of the Department of Labor in the NPR.

The Board has considered each of the above concerns and, after careful evaluation of them, has determined that further rulemaking proceedings, with their concomitant costs and delay, are not warranted in this context.

1. The request for an extended comment period and for ''investigatory'' rulemaking.—The rulemaking procedure employed by the Board in this context is substantially similar to that employed by the Board with respect to every other regulation promulgated thus far under the CAA; and it complies with the required procedures under section 304 of the CAA. Specifically, section 304(b) generally requires the Board to issue a notice of proposed rulemaking and to provide a comment period of at least 30 days. The Board has done so. Nor is there any reason to believe that a significant extension of the comment period beyond 30 days or a resort to alternative forms of rulemaking would result in a different rulemaking comment record, either qualitatively or quantitatively: The Board's rulemaking record includes an extensive report from its General Counsel—a report which itself was prepared on the basis of an extensive investigation by the General Counsel and with the invited participation of all employing offices. In addition, the General Counsel met with representatives of a number of employing offices prior to the inspections, including the Architect of the Capitol, concerning the appropriate standards to be applied to Legislative Branch facilities. Moreover, no commenter claimed an inability in this rulemaking proceeding to adequately present its views through written submissions. Indeed, the only specific request for an extension of the comment period came from this particular commenter, who requested an extension of only one day, which was granted. No request for further time was sought by the commenter or by any other person or organization. Finally, a review of the comments received tends to reinforce the Board's view that an extended comment period, hearings, and/or other additional forms of rulemaking proceedings would only result in the addition to the record of information which would at most duplicate or corroborate the written comments without providing further insight into or elucidation of the issues involved.

2. Failure to issue an Advance Notice of Proposed Rulemaking.—Although not expressly provided for in the Administrative Procedure Act (''APA''), an advance notice of proposed rulemaking (''ANPR'') is sometimes used by administrative agencies to seek information from the public to assist in framing a notice of proposed rulemaking and to narrow the issues during the public comment period on the proposed rules ultimately developed. *See, e.g.*, 52 Fed. Reg. 38,794 (1987) (preliminary notice for Medicare anti-kickback regulations). Thus, in prior rulemakings, the Board has sometimes used ANPRs to obtain views regarding interpretation of statutory provisions in the CAA that had not previously been interpreted by the Board and to obtain general information regarding conditions within the Legislative Branch that may bear on rulemaking questions. *See, e.g.*, 141 Cong. Rec. S14542 (daily ed. Sept. 28, 1995) (ANPR seeking information regarding, *inter alia,* the standard for determining whether and to what extent regulations under the CAA should be modified for ''good cause;'' whether regulations imposing notice posting and recordkeeping requirements are included within the CAA; whether certain regulations constituted ''substantive regulations;'' and whether the concept of ''joint employer status'' is applicable under the CAA). From these prior rulemaking proceedings, the Board has developed a body of interpretations of the CAA upon which it has drawn in developing the proposed rules in this rulemaking.

In contrast to those earlier rulemaking proceedings, here no ANPR was necessary or appropriate. Both the Board and its statutory appointees have now had over a year's experience in addressing regulatory issues governing the Legislative Branch and have collected a body of institutional knowledge and experience that makes the open-ended information gathering techniques such as an ANPR less needed. Indeed, the rulemaking experience under the CAA over the last year has shown that ANPRs have become less useful over time. For example, although the Board received twelve separate responses to the first ANPR that it issued in September of 1995, the most recent ANPR issued by the Board, regarding rulemaking under section 220(e), elicited only 2 comments directed to section 220(e), neither of which addressed the precise questions posed by the Board in that ANPR. *See* 142 Cong. Rec. S5552 (daily ed. May 23, 1996) (NPR regarding section 220(e)). And, in this context, there is no reason to believe that further comments beyond those received in response to the NPR would have been received had an ANPR been issued.

More to the point, there is no reason to believe that procedures other than the traditional notice-and-comment procedures outlined in section 304 of the CAA would develop any further useful information in the context of rulemaking under section 215 especially given the information already gathered by the Office regarding these issues. Among other things, the General Counsel has conducted an inspection of all facilities within the Legislative Branch for compliance with health and safety standards under sections 215 and disability access standards under section 210, utilizing as guidelines standards that were in a form virtually identical to the regulations which the Board has proposed. The General Counsel also sent detailed inspection questionnaires to each Member of the House of Representatives and to each Member of the Senate regarding compliance with health and safety and disability access standards in District and Home State offices. The General Counsel's reports regarding compliance issues under sections 210 and 215 of the CAA were submitted June 28, 1996 and detailed the application of safety and health and disability regulations to conditions within the legislative branch. Copies of those reports were delivered in July 1996 to each Senator and Representative, to each committee of Congress, and to representatives of every other employing office in the Legislative Branch, including the commenter. No comments were received from anyone concerning the appropriateness of applying any such regulations to Legislative Branch offices, and the commenter has not provided any here.

Where, as here, an ANPR would not likely result in receipt of additional useful information to develop a proposed rule, there is also the concern that its use might be viewed as evidence of procrastination in the face of an obligation to proceed quickly with important rulemaking activity. *Cf. United Steelworkers of America* v. *Pendergrass,* 819 F.2d 1263, 1268 (3d Cir. 1987) (challenge to OSHA's failure to issue revised rule on hazard communication in response to court remand; court was extremely critical of OSHA having published an ANPR to supplement original record); Administrative Conference of the United States Recommendation No. 87-10, ''Regulation by the Occupational Safety and Health Administration,'' *published at* 1 C.F.R. §305.87-10, ¶3(e) (1989) (recommending that agency should not routinely use ANPR's as an information-gathering technique and that they should be used only when information not otherwise available to the agency ''is likely to be forthcoming'' in response to the ANPR). This is particularly true where, as here, the Office of Compliance, through the General Counsel, has already gathered a considerable body of experience and information regarding the conditions of operations and facilities within the Legislative Branch and how the regulations proposed by the Board would likely affect those operations and facilities. Nothing has been offered by any commenter to suggest a new area of inquiry or information which was not considered by the Board in the NPR that might affect the Board's decision regarding any of the regulatory matters contained in the NPR. In the absence of any such showing, additional rulemaking proceedings are neither required nor desirable.

3. The timing of the notice of proposed rulemaking.—The commenter's argument regarding the timing of the issuance of the regulations also does not require additional rulemaking proceedings.

Despite the commenter's suggestion to the contrary, there is nothing unusual or unprecedented about the Board issuing simultaneously two notices of proposed rulemaking implementing two separate sections of the CAA. For example, on November 28, 1995, the Board issued concurrent notices of proposed rulemaking to implement the rights and protections of *five* major sections of the CAA: sections 202 (Family and Medical Leave Act), 203 (Fair Labor Standards Act), 204 (Employee Polygraph Protection Act),

and 205 (Worker Adjustment Retraining and Notification Act). *See, e.g.*, 141 Cong. Rec. S17627-S17652, S17603-27, S17656-64, S17652-56 (daily ed., Nov. 28, 1995). The volume of regulations covered by those five notices (and the collective complexity and diversity of the legal and interpretative rulemaking issues involved in promulgating those five sets of proposed regulations) was significantly greater than the proposed regulations at issue here and those proposed under section 210. The commenter has not shown that there is anything about the nature and extent of the regulations in the current rulemaking proceedings that has impeded the ability of any commenter to provide useful and comprehensive comments.

Similarly, the timing of the issuance of proposed regulations here was not only appropriate, but it also was necessary. Sections 210 and 215 of the CAA become effective on January 1, 1997, a date which was set by the CAA , not by the Board. The proposed regulations were developed and issued as soon as practicable given, *inter alia*, the need of the Board and all interested persons to first have the benefit of the General Counsel's investigation and reports and the need to first complete rulemaking on sections of the CAA that contained earlier effective dates, such as sections 203-207 (effective January 23, 1996) and section 220 (effective October 1, 1996). The proposed regulations were issued when they were in order to afford commenters the earliest practical opportunity to comment on the proposed regulations so that final regulations could be adopted by the Board before the effective date of section 215 of the CAA.

The schedule of Congress cannot be a determinative factor for the Board in deciding when to issue proposed regulations. The CAA applies whether the Congress is in session or not; and the CAA imposes deadlines that must be met whether the Congress is in session or not. The session of Congress is relevant to the date of publication of regulations, which is why the Board submitted the NPR to the Congress prior to adjournment *sine die*, so that the NPR could be published (in accordance with section 304(1) of the CAA) for comment prior to January 1, 1997. The rights and protections of the CAA continue while Congress is in recess, and the CAA requires that employing offices and Members meet their obligations whether Congress is in session or not.

4. Technical and nomenclature changes.—As with prior rulemakings, the Board has proposed to make technical and nomenclature changes to make the language of the adopted regulations fit more naturally to situations arising within the Legislative Branch. *See, e.g.*, 142 Cong. Rec. at S225 (daily ed. Jan. 22, 1996) (final regulations regarding section 203 of the CAA). However, the Board has made clear that such changes are not intended to affect a substantive change in the regulations. *Id*. Examples of such changes include the following substitutions: ''employing office'' for ''employer,'' ''covered employee'' for ''employee,'' definitions of ''employing office'' (including the list of offices set forth in the CAA) for the definition of ''employer,'' and deleting provisions regarding interstate commerce as a basis for jurisdiction (which is not a requirement of the CAA).

The Board disagrees with the commenter's argument that failing to catalogue each of these changes in the preamble somehow hinders commenters' ability to provide effective comments regarding the proposed regulations. Where significant changes in the substance of the regulations have been proposed, such changes have been summarized and discussed in the preamble to the proposed regulations. However, as in past notices of proposed rulemaking, the Board has generally described the nature of proposed technical and nomenclature changes and has made clear that such changes are not intended to effect a significant or substantive change in the nature of the regulations adopted. Moreover, the complete text of the proposed regulations, including technical and nomenclature changes, has been made available for review as part of the NPR. It is the responsibility of commenters to review and comment on these matters; while the Board desires reasonably to assist this process, it cannot do the commenters' work; and there is absolutely no reason to delay rulemaking on this basis.

5. Record of comments and public meetings.—Finally, the Board rejects the suggestion that it publish a summary of the discussions that have occurred between the Office and representatives of the Secretary of Labor and other agencies. Those discussions have not been with members of the Board; and the public record is solely for matters presented to the Board by outside persons. General discussions with outside persons by staff of the Office of Compliance are not properly part of that record; nor are discussions between staff and the Board properly part of that record. There is no legal basis or precedent for making such discussions part of the record; and to do so would improperly chill inter-agency and intra-agency deliberations and communications.

B. Regulations that the Board proposed to adopt

1. Substantive health and safety standards at Parts 1910 and 1926, 29 CFR.—In the NPR, the Board proposed that otherwise applicable health and safety standards of the Secretary's regulations published at Parts 1910 and 1926 of Title 29 of the Code of Federal Regulations (''29 CFR'') be adopted with only limited modifications. All commenters agreed in general with the Board's proposal.

2. Recordkeeping requirements contained in substantive health and safety standards of Parts 1910 and 1926.—The Board further proposed to include within its regulations recordkeeping requirements contained in the substantive health and safety standards of Parts 1910 and 1926, 29 CFR. One commenter took issue with this decision, arguing that adoption of such requirements is contrary to the intent of the CAA. The Board disagrees.

Section 215(d)(2) provides that the Board regulations shall be ''the same as'' the regulations of the Secretary implementing the health and safety standards of section 5 of the OSHAct. Where, as here, a recordkeeping or posting requirement is expressly contained in and inextricably intertwined with a substantive health and safety standard, the Board is required to adopt the standard as written under section 215(d)(2), unless there is good cause to believe that not including the recordkeeping or posting requirement would be ''more effective for the implementation of the rights and protections'' under section 215. In contrast to the general recordkeeping regulations that implement section 8(c) of the OSHAct (discussed at section I.C.2., *infra*), adoption of the health and safety standards, including those specific recordkeeping requirements that are part and parcel of such standards, is authorized (if not compelled) by section 215(d)(2).

The commenter does not offer any basis for concluding that excluding such recordkeeping or posting requirements would be ''more effective'' for implementing the rights and protections of the health and safety standard at issue. On the contrary, there is every reason to believe that the substantive health and safety protections contained in subpart Z of Part 1910, such as the rules relating to employee exposure, would be less effective without a requirement that employing offices document such exposure.

C. Regulations that the Board proposes not to adopt

1. Rules of procedure for variances, procedure regarding inspections, citations, and notices.—The Board proposed not to adopt as regulations under section 215(d) provisions of the Secretary's regulations that did not constitute health and safety standards and/or were not promulgated to implement the provisions of section 5 of the OSHAct. 142 Cong. Rec. at S11020. In doing so, the Board noted that, with respect to those regulations that dealt with procedures of the Office, the Executive Director might, where appropriate, decide to propose comparable provisions pursuant to a rulemaking undertaken in accordance with section 303 of the CAA.

All four commenters took issue with the Board's decision. Two commenters argued that, because sections 8, 9 and 10 of the OSHAct (which include provisions governing variances and the procedure for inspections, citations, and penalties) are referenced in section 215(c) of the CAA, the Secretary's regulations implementing those sections (Parts 1903 and 1905, 29 CFR) are within the Board's mandatory rulemaking authority under section 215(d)(2). These commenters characterized the Board's decision as a refusal to adopt the variance, citations, and inspections regulations because they are ''procedural'' as opposed to ''substantive'' regulations, which the commenters believe is inconsistent with the Board's resolution of a similar issue in the context of the Board's section 220 regulations. *See* 142 Cong. Rec. at S5072 (daily ed. May 15, 1996) (NPR regarding section 220) (procedural rules ''can in fact be substantive regulations'' and the fact that the ''regulations may arguably be procedural in content is, in the Board's view, not a legally sufficient reason for not viewing them as 'substantive' regulations.''). Two other commenters argued that regulations covering the subject of variances, citations, and similar other matters cannot be issued as rules governing the procedures of the Office under section 303 of the CAA, because to do so would improperly circumvent Congress' ability to review and pass on substantive regulations prior to their implementation (since section 303 regulations require no congressional approval). A third commenter argued that rules regarding variances, inspections, and citations should be issued by the Board as substantive regulations, rather than by the Executive Director under section 303 of the CAA; however, this commenter did not offer a legal basis for this argument. Finally, a fourth commenter argued that the Part 1903 regulations should be issued as part of the current rulemaking, regardless whether they are issued as substantive regulations under section 215(d)(2) of the CAA or as procedures of the Office under section 303 of the CAA.

After carefully considering these various comments, the Board has again determined that it would not be legally appropriate to adopt the Secretary's regulations at Parts 1903 and 1905, 29 CFR, as regulations under section 215(d)(2). Contrary to the commenters' characterization, the Board excluded Parts 1903 and 1905 from the proposed regulations, not because they were ''procedural'' as opposed to ''substantive,'' but because they were not within the scope of the Board's rulemaking authority under section 215(d)(2) of the CAA. Section 215(d)(2) provides that the regulations issued by the Board to implement section 215 ''shall be the same as substantive regulations promulgated by the Secretary of Labor to implement *the statutory provisions referred to in subsection (a)* [of section 215],'' except for modification of those regulations for ''good cause.'' The only ''statutory provision[] referred to in subsection (a)'' of section 215 is section 5 of the

OSHAct, which sets forth the substantive health and safety standards applicable to employers. Thus, only the regulations of the Secretary that implement the substantive health and safety standards of section 5 of the OSHAct are within the scope of the Board's rulemaking authority under section 215(d)(2). Because the Secretary's health and safety standards contained in Parts 1910 and 1926 implement section 5 of the OSHAct, such regulations may be included within the proposed regulations; but the Secretary's regulations regarding variance procedures, inspections, citations and notices, set forth at Parts 1903 and 1904, were promulgated to implement sections 8, 9, and 10 of the OSHAct, statutory provisions which are not ''referred to in subsection (a)'' of section 215. Thus, the plain language of section 215(d)(2) excludes such regulations from the scope of the Board's rulemaking mandate under section 215(d)(2).

The commenters apparently read section 215(d)(2)'s requirement that the Board's regulations be ''the same as substantive regulations promulgated by the Secretary of Labor'' as including any regulation promulgated by the Secretary to implement *any* provision of the OSHAct referred to in *any* subsection of section 215, including subsection (c). But the Board may not properly ignore the requirement of section 215(d)(2) that the regulations be promulgated ''to implement the statutory provisions referred to in subsection (a).'' To do so would violate the cardinal rule of statutory construction that a statute should not be read as rendering any word or phrase therein mere surplusage. *See Babbitt* v. *Sweet Home Ch. of Commun. for Greater Or.*, 115 S.Ct. 2407, 2413 (1995).

The only way in which regulations implementing provisions of the OSHAct referred to in subsection (c) could be considered within the scope of regulations under section 215(d)(2) would be by speculating that Congress' specific reference to subsection (a) was inadvertent. However, such ''[s]peculation loses, for the more natural reading of the statute's text, which would give effect to all of its provisions, always prevails over a mere suggestion to disregard or ignore duly created law as legislative oversight.'' *United Food and Commercial Workers* v. *Brown Group, Inc.*, 116 S.Ct. 1529, 1533 (1996).

Furthermore, because section 215(c) sets forth a detailed enforcement procedure which is significantly different from the procedures of the OSHAct, it is doubtful that the drafters intended to include regulations implementing OSHAct enforcement procedures as part of the Board's rulemaking under section 215(c)(2). Instead, given the significant differences between the two statutory enforcement provisions, it is reasonable to conclude that Congress did not intend the Board to presume that the regulations regarding such procedures should be ''the same'' as the Secretary's procedures, as they generally must be if they fell within the Board's substantive rulemaking authority under section 215(d)(2). Thus, the commenters' interpretation is not supported by either the text or the legislative history of section 215.[1]

For this reason, the Board must also reject the commenter's suggestion that it ''modify'' the proposed regulations to include the Secretary's Part 1903 and 1904 regulations. The Board cannot adopt as a ''modification'' regulations that are not within the scope of section 215(d)(2). *See* 141 Cong. Rec. S17603, 17604 (daily ed. Nov. 28, 1995) (''Because the Board's authority to modify the Secretary's regulations for 'good cause' does not authorize it to adopt regulatory requirements that are the equivalent of statutory requirements that Congress has omitted from the CAA * * * ''); *see also MCI Telecommunications* v. *American Tel. & Tel.*, 114 S.Ct. 2223, 2230 (1994) (FCC's statutory authority to ''modify any requirement'' under section of tariff statute did not authorize FCC to make basic and fundamental changes in regulatory scheme; term ''modify'' connotes moderate or incremental change in existing requirements).

2. General recordkeeping requirements.—In the NPR, the Board proposed not to adopt regulations implementing the general recordkeeping requirements of section 8(c) of the OSHAct. The Board determined that section 8(c) of the OSHAct is neither a part of the rights and protections of section 5 of the OSHAct nor a substantive health and safety standard referred to therein. Thus, regulations promulgated by the Secretary to implement the recordkeeping requirements are not within the scope of the Board's rulemaking under section 215(d)(2).

Two commenters asked the Board to reconsider this decision and to issue regulations implementing section 8(c) of the OSHAct. The Board has considered these comments and finds no new arguments or statutory evidence therein to support a change in the Board's original conclusion. The arguments offered by the commenters were substantially the same as those that were considered and rejected by the Board in an earlier rulemaking on an essentially identical issue. *See* 141 Cong. Rec. S17603, 17604 (daily ed. Nov. 28, 1995) (resolving identical issue in the context of rulemaking under section 203 of the CAA).

D. Method for identifying responsible employing office

In section 1.106 of the proposed regulations, the Board set forth a method for identifying the employing office responsible for correction of a particular violation. Under proposed section 1.106, correction of a violation of section 215(a) ''is the responsibility of any employing office that is a creating employing office, a controlling employing office, and/or a correcting employing office, as defined by this section, to the extent that the employing office is in a position to correct or abate the hazard or to ensure its correction or abatement.''

1. General comments regarding section 1.106.—One commenter argued that section 1.106 should be significantly revised or a different method developed by the Board because: (1) the definitions of ''creating,'' ''exposing,'' ''controlling,'' and ''correcting'' employer are allegedly vague and confusing and give insufficient guidance to employing offices regarding their responsibilities; and (2) section 1.106 contemplates the possibility that more than one employing office may be held responsible for correcting a violation, which is said to be contrary to section 215 (which the commenter argues prohibits the imposition of joint responsibility) and, assuming that more than one employing office may properly be held responsible under section 1.106, the Board should provide a mechanism for allocating joint responsibility among multiple offices. The Board has considered each of these arguments and, as explained below, finds no reason to depart substantially from the proposed regulations as issued.

a. Definition of ''creating,'' ''exposing,'' ''controlling,'' and ''correcting'' employing office.—The commenter argued that the definitions of ''creating,'' ''exposing,'' ''controlling,'' and ''correcting'' employing office are vague and confusing because allegedly ''they do little more than imply that an employing office can be responsible in almost all situations'' and allegedly do not give any more guidance on this issue than before the proposed regulations were submitted. However, the commenter has not explained how the provisions of proposed section 1.106 can fairly be seen as vague or confusing. To be sure, proposed section 1.106 states general principles that will need to be applied in the context of actual factual situations by the General Counsel and, ultimately, by the Board. But this is the case with almost every rule of law, whether stated in a statute, a regulation, or a judicial decision. The fact that the text of a regulation on its face does not purport to provide a clear answer to every hypothetical question that may be posed by a party is not a reason to deem a regulation to be unclear. In the course of individual cases before the General Counsel and ultimately the Board, application of these rules will be made to specific situations. Without further elaboration by the commenter as to the nature of the purported ambiguity, there is no reason to believe that further clarification or elaboration in section 1.106 is needed.

b. Joint responsibility.—The commenter argued that section 1.106 authorizes assigning correction responsibility to more than one employing office, which it said to be is contrary to the CAA. In support of its argument, the commenter seized upon the provisions of section 215(d)(3), which direct the Board to develop a method for identifying ''the employing office, not employing offices,'' and section 415, which states that funds to correct violations may be paid only from funds appropriated ''to the employing office or entity responsible for correcting such violations.'' (emphasis in original of comment). According to the commenter, these provisions establish a statutory prohibition on the imposition of ''joint'' responsibility for section 215 violations. Again, the Board disagrees.

First, it is an elementary rule of statutory construction that reference to persons or parties in statutory language stated in the singular is presumed to include the plural. *See, e.g.*, 1 U.S.C. §1 (''In determining the meaning of any Act of Congress, unless the context indicates otherwise—words importing the singular include and apply to several persons, parties, or things'').

Second, nothing in the language of section 215 suggests that the General Counsel and the Board must determine *the* (e.g., ''sole'') employing office responsible for correction. On the contrary, the language of section 215, including other subsections not cited by the commenter, suggests that more than one office may have responsibilities for the safety and health of a covered employee. For example, by applying section 5 of the OSHAct, section 215(a) of the CAA imposes a duty on each employing office to provide to its employees employment and a place of employment free of recognized hazards. Section 215(a) makes clear that other entities (in addition to the employing office) may also have a duty to those employees regarding such hazards ''irrespective of whether the entity has an employment relationship'' with that employee. Section 215(a)(2)(C). *See also* subsection (c)(2) (A) and (B) (authorizing the General Counsel to issue a citation or notice to ''*any* employing office responsible for correcting a violation'') (emphasis added).

Third, adoption of a rule that requires the General Counsel in an investigatory proceeding or the hearing officer and/or the Board in an adjudicatory proceeding to determine a single employing office responsible for correction of a violation would be unworkable (and in some cases impossible to apply) and

[1] Even under the commenters' narrow reading of section 215(d)(2), Part 1905 (rules of practice and procedure relating to variances) is not a ''substantive regulation.'' Part 1905 was issued by the Secretary as a ''rule of agency procedures and practice'' and thus was not promulgated after notice and comment. *See* 36 Fed. Reg. 12,290 (June 30, 1971) (''The rules of practice [Part 1905] shall be effective upon publication in the Federal Register (6–30–71).'').

would be inconsistent with similar principles applied under the OSHAct. In the private sector, where a single employer controls the working conditions and working environment of the employees, that employer is solely accountable under the OSHAct for providing safe working conditions for its employees. Similarly, in situations under section 215 of the CAA where the alleged violation involves a one-employing office workplace that is under the sole authority and jurisdiction of that office, section 1.106 would not be needed to resolve the issue of responsibility for correction. However, as the Board noted in NPR, the vast majority of workplaces in the Legislative Branch are not conventional, one-employing office workplaces. Instead, there are a number of employing offices and entities (including, but not limited to, the Architect of the Capitol, the Sergeants-At-Arms, the Chief Administrative Officer of the House, Senate and House committees, and individual Members) that have varying degrees of actual or apparent jurisdiction, authority, and responsibility for the physical location in which the violation occurred and, therefore, for correction of violations. Section 1.106 is needed to address such situations; and it can workably do so only by imposing responsibility on several covered entities.

In private sector worksites where the working environment is controlled by more than one employer, such as in construction or other activities involving subcontractors, OSHA's longstanding policy has been to hold multiple employers responsible for the correction of workplace hazards in appropriate cases. Thus, when safety or health hazards occur on multi-employer worksites in the private sector, OSHA will issue citations not only to the employer whose employees were exposed to the violation, but also to other employers, such as general contractors or host employers, who can reasonably be expected to have identified or corrected the hazard by virtue of their supervisory role over the worksite. See OSHA Field Inspection Reference manual (''FIRM''), OSHA Instruction CPL 2.103 at III–28,29 (1994). This multi-employer policy does not confer special burdens on these superintending employers, but merely recognizes that employers with overall administrative responsibility for an ongoing project or worksite are responsible under the OSHAct for taking reasonable steps to correct the violation, or to require correction of hazards to the extent of their authority and/or responsibility. There is no legal basis for excusing employing offices under the CAA from similar responsibilities.

As noted in the NPR, the employing office's responsibility for correction is only to the extent that it is ''in a position to correct or abate the hazard or to ensure its correction or abatement.'' In addition, the duties of the employing office under section 1.106 are no more than to exercise the power or authority that it may possess, singularly or together with other employing offices, to ensure the correction of the hazard. The Board finds no compelling reason to reconsider this rule.

The Board also declines the commenter's suggestion that it adopt rules allocating responsibility in what it characterizes as ''joint'' liability situations. Contrary to the commenter's assumption, the responsibility under section 1.106 is not ''joint'' but ''several.'' That is, the employing office is only responsible to the extent that it is a ''creating,'' ''exposing,'' ''controlling,'' and/or ''correcting'' employing office and to the extent that it is ''in a position to correct or abate the hazard or to ensure its correction or abatement.'' Thus, if the facts establish that a particular employing office only ''exposed'' its employees to a hazard (but did not create the hazard or have control over the workspace involved), that employing office discharges its responsibility (and abates its ''share'' of a citation) by ceasing the activity that exposes its employees to the hazard (by not sending its employees to the area, providing personal protective equipment, etc.). Even though the ''exposing'' employing office has discharged its responsibility (and is, therefore, no longer a ''responsible employing office'' with respect to that violation), the ''violation'' at that worksite is not abated until the condition creating the hazard is eliminated. In most cases, that responsibility will be assigned to the ''correcting'' employing office. However, in some cases, the ''controlling'' employing office (the one with legal authority to control the area) may be a different office than the ''correcting'' employing office and, therefore, may need to be a party to any proceeding so that complete relief can be granted by the hearing officer to ensure correction of the violation.

For all of the above reasons, the Board will adopt section 1.106, as modified below, as part of its final regulations.

2. Recommended modifications to section 1.106(c).—One commenter took issue with the following portion of section 1.106(c):

''In addition, if equipment or facilities to be used by an employing office, but not under the control of the employing office, do not meet applicable health and safety standards or otherwise constitute a violation of section 215(a), it is the responsibility of the employing office not to permit its employees to utilize such equipment or facilities. In such circumstances, the employing office is in violation if, and only if, it permits its employees to utilize such equipment or facilities.''

According to the commenter, this statement fails to recognize the affirmative defense to a violation in situations involving multi-employer worksites where the cited employer does not have the ability to recognize or abate the offending condition or has taken reasonable alternative measures to protect its employees from the hazard. *See Anning Johnson Co.* v. *OSHRC*, 516 F.2d 1081 (7th Cir. 1975). The Board agrees with the commenter that employing offices should have the benefit of this affirmative defense in such a situation. Accordingly, the Board will incorporate the commenter's suggested language (which has been modified to conform to the elements of the multi-employer affirmative defense). As amended, the passage in section 1.106(c) will be revised to read as follows:

''In addition, if equipment or facilities to be used by an employing office, but not under the control of the employing office, do not meet applicable health and safety standards or otherwise constitute a violation of section 215(a), it is the responsibility of the employing office not to permit its employees to utilize such equipment or facilities. In such circumstances, an employing office that did not create or control a violation may avoid liability if, and only if, it proves either that it took reasonable alternative measures to protect its employees against the hazard or that it lacked sufficient expertise to recognize that the equipment or facilities did not meet applicable health and safety standards or otherwise constituted a violation of section 215(a).''

E. Future changes in text of health and safety standards

The commenters generally agreed with the Board's proposed approach regarding changes in the substantive health and safety standards. However, two commenters suggested that the Board expressly state the manner and frequency with and by which it plans to submit changes in substantive rules, and the manner and frequency with and by which the Office will advise employees and employing offices of changes to external documents.

As stated in the NPR, the Board will make any changes in the substantive health and safety standards under the rulemaking procedures of section 304 of the CAA. Those changes will be made as frequently as needed. It is impossible for the Board to establish a pre-set schedule under which as yet unanticipated and unknown changes will be made. Similarly, the frequency by which the Office may issue information to employing offices and employing offices regarding the requirements of the CAA will be based on the appropriate professional judgment of the Office and its statutory appointees in the particular circumstances that issues arise; it cannot be specified in advance.

F. Comments on specific provisions

1. Specific standards of Part 1910 incorporated by reference.—One commenter recommended that the Board not adopt the following provisions that were included within the proposed regulations, which the commenter contended are inapplicable to operations of the Legislative Branch: 1910.104 (relating to installation of bulk oxygen systems), 1910.216 (relating to mills and calenders in the rubber and plastics industries), and 1910.266 (relating to logging operations). Upon further consideration, the Board will delete these provisions from its final regulations, as recommended by the commenter.

This commenter also recommended that the Board exclude from the final regulations sections 1910.263 (safety and health standards relating ''to the design, installation, operation and maintenance of machinery and equipment used in a bakery''), and section 1910.264 (standards relating to ''laundry machinery and operations''). Because the terms ''bakery'' and ''laundry'' are not defined in the regulations, it is not clear that these sections are inapplicable to conditions or facilities within the Legislative Branch. Accordingly, out of an abundance of caution, the Board will retain sections 1910.263 and 1910.264 in the final regulations.

Finally, for the reasons set forth in section I.B.2, *supra*, the Board declines the commenter's suggestion that sections 1910.1020 (access to employee exposure and medical records) and 1910.1200 (hazard communication) not be included within the Board's final regulations because they may require employing offices to make or maintain records to meet these substantive health and safety standards.

2. Section 1.104 (Notice of protection).—Two commenters argued that proposed section 1.104 should be deleted since they fear that the section may be interpreted as a notice posting or recordkeeping ''requirement.'' On the contrary, section 1.104 merely provides that, consistent with section 301(h) of the CAA, the Office will make information regarding the CAA available to employing offices in a manner suitable for posting. This identical provision has been included in prior regulations promulgated by the Board and approved by Congress. *See, e.g.*, Final Rules Under Section 204 of the CAA, section 1.6, 141 Cong. Rec. at S265 (daily ed. Jan. 22, 1996).

3. Sections 1.102 (Definition of ''covered employee'') and 1.105 (Authority of the Board).—Two commenters took issue with the Board's inclusion of proposed sections 1.102 (defining ''covered employee'') and 1.105 (stating the Board's authority to promulgate regulations under the CAA) because they contend that such provisions are inconsistent with the CAA and/or not needed. The Board is satisfied that these sections are consistent with the CAA and will be retained. As with proposed section 1.104, proposed sections 1.102

and 1.105 have been included in several prior regulations promulgated by the Board and approved by Congress. *See, e.g.*, Final Rules regarding section 203 of the CAA, sections 501.102, 501.104, 141 Cong. Rec. at S226; Final Rules regarding section 204 of the CAA, sections 1.2 and 1.7, 141 Cong. Rec. at S264-65.

4. Section 1900.1 (Purpose and Scope).—Proposed section 1900.1 sets forth the purpose and scope of the Board's adoption of the occupational safety and health standards of Parts 1910 and 1926, 29 CFR. Subsection (b) makes clear that only the substantive health and safety standards of Parts 1910 and 1926 are adopted by reference and that other materials not relating to health and safety standards are not adopted. One commenter requested further clarification because, in the commenter's view, ''there is no indication of what is 'excluded' '' by the reference. On the contrary, section 1900.1(b) gives an illustration of the types of material not adopted by reference: rules that relate to laws such as the Construction Safety Act, but have no relation to the OSHAct; and statements or references to the duties and/or authorities of the Assistant Secretary of Labor (since such authorities are assigned by the CAA to the General Counsel). In the Board's view, section 1900.1 adequately describes the scope of its incorporation of standards under Parts 1910 and 1926.

G. Technical and nomenclature changes

Two commenters have requested that the Board list the technical and nomenclature changes that it has made to the adopted regulations. Since the Board does not intend by the changes to effect a substantive change in the meaning of the adopted regulations, it is unclear what purpose, if any, would be served by such a list. The regulations adequately set forth the extent of such technical and nomenclature changes. Proposed section 1900.2 states that, except where inconsistent with the definitions, provisions regarding scope, application and coverage, and exemptions provided in the CAA or other sections of these regulations, the definitions, provisions regarding scope, application and coverage, and exemptions provided in Parts 1910 and 1926, 29 CFR, as incorporated into these regulations, shall apply under these regulations. For example, any reference to ''employer'' in Parts 1910 and 1926 shall be deemed to refer to ''employing office.'' The commenter identified a number of other miscellaneous statements in the NPR and the proposed rules therein that it contends are vague and ambiguous or misleading, and/or inconsistent with its reading of the CAA, for which the commenter suggests technical corrections and clarifications. The Board has considered all of these suggestions and, as appropriate, has adopted them.

II. Method of Approval

The Board received no comments on the method of approval for these regulations. Therefore, the Board continues to recommend that (1) the version of the proposed regulations that shall apply to the Senate and employees of the Senate should be approved by the Senate by resolution; (2) the version of the proposed regulations that shall apply to the House of Representatives and employees of the House of Representatives should be approved by the House of Representatives by resolution; and (3) the version of the proposed regulations that shall apply to other covered employees and employing offices should be approved by the Congress by concurrent resolution.

Signed at Washington, D.C. on this 20th day of December, 1996.

GLEN D. NAGER,
Chair of the Board,
Office of Compliance.

Accordingly, the Board of Directors of the Office of Compliance hereby adopts and submits for approval by the Congress the following regulations:

ADOPTED REGULATIONS

APPLICATION OF RIGHTS AND PROTECTIONS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (SECTION 215 OF THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995)

PART 1—MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS PROMULGATED UNDER SECTION 215 OF THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995

Sec.
1.101 Purpose and scope
1.102 Definitions
1.103 Coverage
1.104 Notice of protection
1.105 Authority of the Board
1.106 Method for identifying the entity responsible for correction of violations of section 215

§ 1.101 Purpose and scope.

(a) *Section 215 of the CAA.* Enacted into law on January 23, 1995, the Congressional Accountability Act (''CAA'') directly applies the rights and protections of eleven federal labor and employment law and public access statutes to covered employees and employing offices within the Legislative Branch. Section 215(a) of the CAA provides that each employing office and each covered employee shall comply with the provisions of section 5 of the Occupational Safety and Health Act of 1970 (''OSHAct''), 29 U.S.C. §654. Section 5(a) of the OSHAct provides that every covered employer has a general duty to furnish each employee with employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to those employees, and a specific duty to comply with occupational safety and health standards promulgated under the law. Section 5(b) requires covered employees to comply with occupational safety and health standards and with all rules, regulations and orders which are applicable to their actions and conduct. Set forth herein are the substantive regulations that the Board of Directors of the Office of Compliance has promulgated pursuant to section 215(d) of the CAA.

(b) *Purpose and scope of regulations.* The regulations set forth herein (Parts 1 and 1900) are the substantive regulations that the Board of Directors of the Office of Compliance has promulgated pursuant to section 215(d) of the CAA. Part 1 contains the general provisions applicable to all regulations under section 215, including the method of identifying entities responsible for correcting a violation of section 215. Part 1900 contains the substantive safety and health standards which the Board has adopted as substantive regulations under section 215(e).

§ 1.102 Definitions.

Except as otherwise specifically provided in these regulations, as used in these regulations:

(a) *Act or CAA* means the Congressional Accountability Act of 1995 (Pub.L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) *OSHAct* means the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. §§651, et seq.), as applied to covered employees and employing offices by Section 215 of the CAA.

(c) The term *covered employee* means any employee of (1) the House of Representatives; (2) the Senate; (3) the Capitol Guide Service; (4) the Capitol Police; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; and (8) the Office of Compliance.

(d) The term *employee* includes an applicant for employment and a former employee.

(e) The term *employee of the Office of the Architect of the Capitol* includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(f) The term *employee of the Capitol Police* includes any member or officer of the Capitol Police.

(g) The term *employee of the House of Representatives* includes an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (c) above.

(h) The term *employee of the Senate* includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (c) above.

(i) The term *employing office* means: (1) the personal office of a Member of the House of Representatives or the Senate or a joint committee; (2) a committee of the House of Representatives or the Senate or a joint committee; (3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or (4) the Capitol Guide Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance.

(j) The term *employing office* includes any of the following entities that is responsible for correction of a violation of this section, irrespective of whether the entity has an employment relationship with any covered employee in any employing office in which such violation occurs: (1) each office of the Senate, including each office of a Senator and each committee; (2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee; (3) each joint committee of the Congress; (4) the Capitol Guide Service; (5) the Capitol Police; (6) the Congressional Budget Office; (7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden); (8) the Office of the Attending Physician; and (9) the Office of Compliance.

(k) *Board* means the Board of Directors of the Office of Compliance.

(l) *Office* means the Office of Compliance.

(m) *General Counsel* means the General Counsel of the Office of Compliance.

§ 1.103 Coverage.

The coverage of Section 215 of the CAA extends to any ''covered employee.'' It also extends to any ''covered employing office,'' which includes any of the following entities that is responsible for correcting a violation of section 215 (as determined under section 1.106), irrespective of whether the entity has an employment relationship with any covered employee in any employing office in which such a violation occurs:

(1) each office of the Senate, including each office of a Senator and each committee;

(2) each office of the House of Representatives, including each office of a Member of the House of Representatives and each committee;

(3) each joint committee of the Congress;

(4) the Capitol Guide Service;

(5) the Capitol Police;

(6) the Congressional Budget Office;

(7) the Office of the Architect of the Capitol (including the Senate Restaurants and the Botanic Garden);

(8) the Office of the Attending Physician; and

(9) the Office of Compliance.

§ 1.104 Notice of protection.

Pursuant to section 301(h) of the CAA, the Office shall prepare, in a manner suitable for posting, a notice explaining the provisions of section 215 of the CAA. Copies of such notice may be obtained from the Office of Compliance.

§ 1.105 Authority of the Board.

Pursuant to section 215 and 304 of the CAA, the Board is authorized to issue regulations to implement the rights and protections of section 215(a). Section 215(d) of the CAA directs the Board to promulgate regulations implementing section 215 that are ''the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) except to the extent that the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.'' 2 U.S.C. § 1341(d). The regulations issued by the Board herein are on all matters for which section 215 of the CAA requires a regulation to be issued. Specifically, it is the Board's considered judgment, based on the information available to it at the time of promulgation of these regulations, that, with the exception of the regulations adopted and set forth herein, there are no other ''substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions referred to in subsection (a) [of section 215 of the CAA]'' that need be adopted.

In promulgating these regulations, the Board has made certain technical and nomenclature changes to the regulations as promulgated by the Secretary. Such changes are intended to make the provisions adopted accord more naturally to situations in the Legislative Branch. However, by making these changes, the Board does not intend a substantive difference between these regulations and those of the Secretary from which they are derived. Moreover, such changes, in and of themselves, are not intended to constitute an interpretation of the regulation or of the statutory provisions of the CAA upon which they are based.

§ 1.106 Method for identifying the entity responsible for correction of violations of section 215.

(a) *Purpose and scope.* Section 215(d)(3) of the CAA provides that regulations under section 215(d) include a method of identifying, for purposes of this section and for categories of violations of section 215(a), the employing office responsible for correcting a particular violation. This section sets forth the method for identifying responsible employing offices for the purpose of allocating responsibility for correcting violations of section 215(a) of the CAA. These rules apply to the General Counsel in the exercise of his authority to issue citations or notices to employing offices under sections 215(c)(2)(A) and (B), and to the Office and the Board in the adjudication of complaints under section 215(c)(3).

(b) *Employing Office(s) Responsible for Correcting a Violation of Section 215(a) of the CAA.* With respect to the safety and health standards and other obligations imposed upon employing offices under section 215(a) of the CAA, correction of a violation of section 215(a) is the responsibility of any employing office that is an exposing employing office, a creating employing office, a controlling employing office, and/or a correcting employing office, as defined in this subsection, to the extent that the employing office is in a position to correct or abate the hazard or to ensure its correction or abatement.

(i) *Creating employing office* means the employing office that actually created the hazard forming the basis of the violation or violations of section 215(a).

(ii) *Exposing employing office* means the employing office whose employees are exposed to the hazard forming the basis of the violation or violations of section 215(a).

(iii) *Controlling employing office* means the employing office that is responsible, by agreement or legal authority or through actual practice, for safety and health conditions in the location where the hazard forming the basis for the violation or violations of section 215(a) occurred.

(iv) *Correcting employing office* means the employing office that has the responsibility for actually performing (or the authority or power to order or arrange for) the work necessary to correct or abate the hazard forming the basis of the violation or violations of section 215(a).

(c) *Exposing Employing Office Duties.* Employing offices have direct responsibility for the safety and health of their own employees and are required to instruct them about the hazards that might be encountered, including what protective measures to use. An employing office may not contract away these legal duties to its employees or its ultimate responsibilities under section 215(a) of the CAA by requiring another party or entity to perform them. In addition, if equipment or facilities to be used by an employing office, but not under the control of the employing office, do not meet applicable health and safety standards or otherwise constitutes a violation of section 215(a), it is the responsibility of the employing office not to permit its employees to utilize such equipment or facilities. In such circumstances, an employing office that did not create or control a violation may avoid liability if, and only if, it proves either that it took reasonable alternative measures to protect its employees against the hazard or that it lacked sufficient expertise to recognize that the equipment or facilities did not meet applicable health and safety standards or otherwise constituted a violation of section 215(a). It is not the responsibility of an employing office to effect the correction of any such deficiencies itself, but this does not relieve it of its duty to use only equipment or facilities that meet the requirements of section 215(a).

PART 1900—ADOPTION OF OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Sec.

§ 1900.1 Purpose and scope.

(a) The provisions of this subpart B adopt and extend the applicability of occupational safety and health standards established and promulgated by the Occupational Safety and Health Administration (''OSHA'') and set forth at Parts 1910 and 1926 of title 29 of the Code of Federal Regulations, with respect to every employing office, employee, and employment covered by section 215 of the Congressional Accountability Act.

(b) It bears emphasis that only standards (i.e., substantive rules) relating to safety or health are adopted by any incorporations by reference of standards prescribed in this Part. Other materials contained in the referenced parts are not adopted. Illustrations of the types of materials which are not adopted are these. The incorporation by reference of part 1926, 29 CFR, is not intended to include references to interpretative rules having relevance to the application of the Construction Safety Act, but having no relevance to the Occupational Safety and Health Act. Similarly, the incorporation by reference of part 1910, 29 CFR, is not intended to include any reference to the Assistant Secretary of Labor and the authorities of the Assistant Secretary. The authority to adopt, promulgate, and amend or revoke standards applicable to covered employment under the CAA rests with the Board of Directors of the Office of Compliance pursuant to sections 215(d) and 304 of the CAA. Notwithstanding anything to the contrary contained in the incorporated standards, the exclusive means for enforcement of these standards with respect to covered employment are the procedures and remedies provided for in section 215 of the CAA.

(c) This part incorporates the referenced safety and health standards in effect as of the effective date of these regulations.

§ 1900.2 Definitions, provisions regarding scope, applicability and coverage, and exemptions.

(a) Except where inconsistent with the definitions, provisions regarding scope, application and coverage, and exemptions provided in the CAA or other sections of these regulations, the definitions, provisions regarding scope, application and coverage, and exemptions provided in Parts 1910 and 1926, 29 CFR, as incorporated into these regulations, shall apply under these regulations. For example, any reference to ''employer'' in Parts 1910 and 1926 shall be deemed to refer to ''employing office.'' Similarly, any limitation on coverage in Parts 1910 and 1926 to employers engaged ''in a business that affects commerce'' shall not apply in these regulations.

(b) The provisions of section 1910.6, 29 CFR, regarding the force and effect of standards of agencies of the U.S. Government and organizations that are not agencies of the U.S. Government, which are incorporated by reference in Part 1910, shall apply to the standards incorporated into these regulations.

(c) It is the Board's intent that the standards adopted in these regulations shall have the same force and effect as applied to covered employing offices and employees under section 215 of the CAA as those standards have when applied by OSHA to employers, employees, and places of employment under the jurisdiction of OSHA and the OSHAct.

§ 1900.3 Adoption of occupational safety and health standards.

(a) *Part 1910 Standards.* The standards prescribed in 29 CFR part 1910, Subparts B through S, and Subpart Z, as specifically referenced and set forth herein at Appendix A, are adopted as occupational safety and health standards under Section 215(d) of the CAA and shall apply, according to the provisions thereof, to every employment and place of employment of every covered employee engaged in work in an employing office. Each employing office shall protect the employment and places of employment of each of its covered employees by complying with the appropriate standards described in this paragraph.

(b) *Part 1926 Standards.* The standards prescribed in 29 CFR part 1926, Subparts C through X and Subpart Z, as specifically referenced and forth herein at Appendix B, are adopted as occupational safety and health standards under Section 215(d) of the CAA and shall apply, according to the provisions thereof, to every employment and place of employment of every covered employee engaged in work in an employing office. Each employing office shall protect the employment and places of employment of each of its covered employees by complying with the

appropriate standards described in this paragraph.

(c) *Standards not adopted.* This section adopts as occupational safety and health standards under section 215(d) of the CAA the standards which are prescribed in Parts 1910 and 1926 of 29 CFR. Thus, the standards (substantive rules) published in subparts B through S and Z of part 1910 and subparts C through X and Z of part 1926 are applied. As set forth in Appendix A and Appendix B to this Part, this section does not incorporate all sections contained in these subparts. For example, this section does not incorporate sections 1910.15, 1910.16, and 1910.142, relating to shipyard employment, longshoring and marine terminals, and temporary labor camps, because such provisions have no application to employment within entities covered by the CAA.

(d) Copies of the standards which are incorporated by reference may be examined at the Office of Compliance, Room LA 200, 110 Second Street, S.E., Washington, D.C. 20540-1999. The OSHA standards may also be found at 29 CFR Parts 1910 and 1926. Copies of the standards may also be examined at the national office of the Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210, and their regional offices. Copies of private standards may be obtained from the issuing organizations. Their names and addresses are listed in the pertinent subparts of Parts 1910 and 1926, 29 CFR.

(e) Any changes in the standards incorporated by reference in the portions of Parts 1910 and 1926, 29 CFR, adopted herein and an official historic file of such changes are available for inspection at the national office of the Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210.

APPENDIX A TO PART 1900 REFERENCES TO SECTIONS OF PART 1910, 29 CFR, ADOPTED AS OCCUPATIONAL SAFETY AND HEALTH STANDARDS UNDER SECTION 215(D) OF THE CAA

The following is a reference listing of the sections and subparts of Part 1910, 29 CFR, which are adopted as occupational safety and health standards under section 215(d) of the Congressional Accountability Act. Unless otherwise specifically noted, any reference to a section number includes any appendices to that section.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart B—Adoption and Extension of Established Federal Standards

Sec.
1910.12 Construction work.
1910.18 Changes in established Federal standards.
1910.19 Special provisions for air contaminants.

Subpart C—General Safety and Health Provisions [Reserved]

Subpart D—Walking—Working Surfaces

1910.21 Definitions.
1910.22 General requirements.
1910.23 Guarding floor and wall openings and holes.
1910.24 Fixed industrial stairs.
1910.25 Portable wood ladders.
1910.26 Portable metal ladders.
1910.27 Fixed ladders.
1910.28 Safety requirements for scaffolding.
1910.29 Manually propelled mobile ladder stands and scaffolds (towers).
1910.30 Other working surfaces.

Subpart E—Means of Egress

1910.35 Definitions.
1910.36 General requirements.
1910.37 Means of egress, general.
1910.38 Employee emergency plans and fire prevention plans.
Appendix to Subpart E—Means of Egress

Subpart F—Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms

1910.66 Powered platforms for building maintenance.
1910.67 Vehicle-mounted elevating and rotating work platforms.
1910.68 Manlifts.

Subpart G—Occupational Health and Environmental Control

1910.94 Ventilation.
1910.95 Occupational noise exposure.
1910.96 [Reserved]
1910.97 Nonionizing radiation.

Subpart H—Hazardous Materials

1910.101 Compressed gases (general requirements).
1910.102 Acetylene.
1910.103 Hydrogen.
1910.104 [Reserved]
1910.105 Nitrous oxide.
1910.106 Flammable and combustible liquids.
1910.107 Spray finishing using flammable and combustible materials.
1910.108 Dip tanks containing flammable or combustible liquids.
1910.109 Explosives and blasting agents.
1910.110 Storage and handling of liquefied petroleum gases.
1910.111 Storage and handling of anhydrous ammonia.
1910.112 [Reserved]
1910.113 [Reserved]
1910.119 Process safety management of highly hazardous chemicals.
1910.120 Hazardous waste operations and emergency response.

Subpart I—Personal Protective Equipment

1910.132 General requirements.
1910.133 Eye and face protection.
1910.134 Respiratory protection.
1910.135 Head protection.
1910.136 Foot protection.
1910.137 Electrical protective devices.
1910.138 Hand Protection.

Subpart J—General Environmental Controls

1910.141 Sanitation.
1910.143 Nonwater carriage disposal systems. [Reserved]
1910.144 Safety color code for marking physical hazards.
1910.145 Specifications for accident prevention signs and tags.
1910.146 Permit-required confined spaces.
1910.147 The control of hazardous energy (lockout/tagout).

Subpart K—Medical and First Aid

1910.151 Medical services and first aid.
1910.152 [Reserved]

Subpart L—Fire Protection

1910.155 Scope, application and definitions applicable to this subpart.
1910.156 Fire brigades.
Portable Fire Suppression Equipment
1910.157 Portable fire extinguishers.
1910.158 Standpipe and hose systems.
Fixed Fire Suppression Equipment
1910.159 Automatic sprinkler systems.
1910.160 Fixed extinguishing systems, general.
1910.161 Fixed extinguishing systems, dry chemical.
1910.162 Fixed extinguishing systems, gaseous agent.
1910.163 Fixed extinguishing systems, water spray and foam.
Other Fire Protective Systems
1910.164 Fire detection systems.
1910.165 Employee alarm systems.
Appendices to Subpart L
Appendix A to Subpart L—Fire Protection
Appendix B to Subpart L—National Consensus Standards
Appendix C to Subpart L—Fire Protection References for Further Information
Appendix D to Subpart L—Availability of Publications Incorporated by Reference In Section 1910.156 Fire Brigades
Appendix E to Subpart L—Test Methods for Protective Clothing

Subpart M—Compressed Gas and Compressed Air Equipment

1910.166 [Reserved]
1910.167 [Reserved]
1910.168 [Reserved]
1910.169 Air receivers.

Subpart N—Materials Handling and Storage

1910.176 Handling material—general.
1910.177 Servicing multi-piece and single piece rim wheels.
1910.178 Powered industrial trucks.
1910.179 Overhead and gantry cranes.
1910.180 Crawler locomotive and truck cranes.
1910.181 Derricks.
1910.183 Helicopters.
1910.184 Slings.

Subpart O—Machinery and Machine Guarding

1910.211 Definitions.
1910.212 General requirements for all machines.
1910.213 Woodworking machinery requirements.
1910.215 Abrasive wheel machinery.
1910.216 [Reserved]
1910.217 Mechanical power presses.
1910.218 Forging machines.
1910.219 Mechanical power-transmission apparatus.

Subpart P—Hand and Portable Powered Tools and Other Hand-Held Equipment

1910.241 Definitions.
1910.242 Hand and portable powered tools and equipment, general.
1910.243 Guarding of portable powered tools.
1910.244 Other portable tools and equipment.

Subpart Q—Welding, Cutting, and Brazing.

1910.251 Definitions.
1910.252 General requirements.
1910.253 Oxygen-fuel gas welding and cutting.
1910.254 Arc welding and cutting.
1910.255 Resistance welding.

Subpart R—Special Industries

1910.263 Bakery equipment.
1910.264 Laundry machinery and operations.
1910.265–1910.267 [Reserved]
1910.268 Telecommunications.
1910.269 Electric power generation, transmission, and distribution.

Subpart S—Electrical

General
1910.301 Introduction.
Design Safety Standards for Electrical Systems
1910.302 Electric utilization systems.
1910.303 General requirements.
1910.304 Wiring design and protection.
1910.305 Wiring methods, components, and equipment for general use.
1910.306 Specific purpose equipment and installations.
1910.307 Hazardous (classified) locations.
1910.308 Special systems.
1910.309–1910.330 [Reserved]
Safety-Related Work Practices
1910.331 Scope.
1910.332 Training.
1910.333 Selection and use of work practices.
1910.334 Use of equipment.
1910.335 Safeguards for personnel protection.
1910.336—1910.360 [Reserved]
Safety-Related Maintenance Requirements
1910.361—1910.380 [Reserved]
Safety Requirements for Special Equipment
1910.381—1910.398 [Reserved]
Definitions
1910.399 Definitions applicable to this subpart.

OFFICE OF COMPLIANCE REPORT TO CONGRESS

Mr. THURMOND. Mr. President, pursuant to section 102(b) of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1302(b)), the Board of Directors of the Office of Compliance has submitted a report to Congress. This document is titled a ''Review and Report of the Applicability to the Legislative Branch of Federal Law Relating to Terms and Conditions of Employment and Access to Public Services and Accommodations.''

Section 102(b) requires this report to be printed in the CONGRESSIONAL RECORD, and referred to committees with jurisdiction. Therefore I ask unanimous consent that the report be printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

REVIEW AND REPORT OF THE APPLICABILITY TO THE LEGISLATIVE BRANCH OF FEDERAL LAW RELATING TO TERMS AND CONDITIONS OF EMPLOYMENT AND ACCESS TO PUBLIC SERVICES AND ACCOMMODATIONS

[Prepared by the Board of Directors of the Office of Compliance Pursuant to Section 102(b) of the Congressional Accountability Act of 1995 (PL 104–1), Dec. 31, 1996]

SECTION 102 (b) REPORT

Section 102(a) of the Congressional Accountability Act (CAA) lists the eleven laws that ''shall apply, as prescribed by this Act, to the legislative branch of the Federal Government.'' Section 102(b) directs the Board of Directors (Board) of the Office of Compliance to: ''review provisions of Federal law (including regulations) relating to (A) the terms and conditions of employment (including hiring, promotion, demotion, termination, salary, wages, overtime compensation, benefits, work assignments or reassignments, grievance and disciplinary procedures, protection from discrimination in personnel actions, occupational health and safety, and family and medical and other leave) of employees, and (B) access to public services and accommodations.''

And, on the basis of this review, ''[b]eginning on December 31, 1996, and every 2 years thereafter, the Board shall report on (A) whether or to what degree the provisions described in paragraph (1) are applicable or inapplicable to the legislative branch, and (B) with respect to provisions inapplicable to the legislative branch, whether such provisions should be made applicable to the legislative branch.''

In preparing this report, the Board has reviewed the entire United States Code to identify those laws and associated regulations of general application that relate to terms and conditions of employment or access to public accommodations and services. In other words, the Board has reviewed those provisions of law that confer employment rights or benefits on or affect workplace conditions of employees, and that create a corresponding mandate for employers, or that relate to access to public services or accommodations. The Board excluded from consideration those laws that, although employment-related, *(1)* are specific to narrow or specialized industries or types of employment not found in the legislative branch (*e.g.*, employment in maritime or mining industries, or the armed forces, or employment in a project funded by federal grants or contracts); *or (2)* establish government programs of research, data-collection, advocacy, or training, but do not establish correlative rights and responsibilities for employees and employers (*e.g.*, statutes authorizing the Women's Bureau of Labor Statistics); *or (3)* authorize, but do not require, that employers provide benefits to employees, (*e.g.*, so-called ''cafeteria plans'' authorized by 26 U.S.C. 125).

For ease of reference, the results of this research are presented in four tables, each of which contains a matrix of analysis consisting of four parts. The first column of each table lists the name or a short description of the law; the second gives the United States Code citation and any relevant Code of Federal Regulations citation; the third summarizes the provision of law to illustrate the extent to which it relates to terms and conditions of employment or access to public services or accommodations; and, the fourth analyzes the extent of the provision's application in the legislative branch. Because many statutes are either silent or ambiguous in their definition of coverage, and because the issue is only infrequently litigated, it is often difficult to determine definitively